United Nations CAT/C/LUX/CO/6-7

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined sixth and seventh periodic reports of Luxembourg*

1. The Committee against Torture considered the combined sixth and seventh periodic reports of Luxembourg (CAT/C/LUX/6-7) at its 1300th and 1303rd meetings, held on 27 and 28 April 2015 (see CAT/C/SR.1300 and 1303), and adopted, at its 1317th meeting, held on 7 May 2015, the following concluding observations.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure, as this allows for a more focused dialogue between the State party and the Committee.

3. The Committee welcomes the information presented in the combined sixth and seventh periodic reports of Luxembourg. It also appreciates the open and constructive dialogue with the State party's large and diverse delegation and thanks the delegation for its detailed responses to the questions and concerns raised by Committee members.

B. Positive aspects

4. The Committee welcomes the State party's ratification of or accession to the following international instruments:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2010;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2011;

(c) The Convention on the Rights of Persons with Disabilities, in 2011;

(d) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in 2011;

* Adopted by the Committee at its fifty-fourth session (20 April-15 May 2015).

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(e) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), in April 2009.

5. The Committee welcomes the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including the adoption of:

(a) The act of 11 April 2010 establishing the Ombudsman as the national preventive mechanism for the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) The law of 29 August 2008 amending the Freedom of Movement and Immigration Act to include the principle of non-refoulement;

(c) The act of 21 November 2008 on the establishment of the Advisory Commission on Human Rights in Luxembourg;

(d) The amended act of 16 December 2008 on support for children and the family, which prohibits, inter alia, physical and sexual violence and genital mutilation in families and school communities;

(e) The act of 13 March 2009 on combating human trafficking and the act of 8 May 2009 on supporting, protecting and ensuring the safety of victims of trafficking;

(f) The act of 13 February 2011 that incorporated into domestic legislation Council of the European Union framework decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

6. The Committee welcomes other efforts of the State party to give effect to the Convention, including:

(a) The establishment of a holding centre, which began operation in 2011, for the purpose of housing and accommodating aliens subject to detention measures on a site separate from penal correctional facilities;

(b) The adoption, in 2008, of rules of conduct for officials responsible for expulsion orders and, together with the Luxembourg Red Cross, the conclusion of a framework agreement providing for an independent observer to witness expulsion operations.

7. The Committee notes that no allegations of torture have been lodged against the State party since its previous periodic review.

C. Principal subjects of concern and recommendations

Forcible return of persons in need of urgent medical care

8. The Committee is concerned at reports that certain detained persons have been forcibly returned to their home countries despite needing urgent medical care (arts. 3 and 11).

The State party should ensure that all returned persons undergo medical and mental health checks and are not forcibly expelled if in need of urgent medical treatment, particularly if such treatment is not available in their country of origin.

Situation of asylum seekers whose asylum claims have been rejected

9. The Committee is concerned that persons whose asylum claims have been rejected but who cannot return to their country of origin because doing so would expose them to

danger or security risks are not provided adequate resources in the interim and, as such, disappear and become irregular migrants (art. 11).

The State party should take the legislative and administrative measures necessary to ensure that persons whose asylum claims have been rejected but who cannot return to their country of origin for reasons beyond their control are provided with adequate social services and benefits until their return is feasible, and that such persons do not become irregular migrants.

Conditions of detention

10. While the Committee commends the State party for its efforts in and success at avoiding prison overcrowding and for its adoption of the law of 24 July 2014 authorizing the construction of a new prison centre, it is concerned that certain detention conditions, in particular the size and sanitary conditions of some detention cells in police stations, fail to meet international standards, as revealed in the Ombudsman's report of February 2011 on this subject (arts. 11 and 16).

The State party should ensure that all detention conditions are in complete conformity with international standards and take into account that the conditions of prison cells can place additional stress upon persons being detained. In this regard, the State party should:

(a) **Increase the size of the cells used to detain persons for short periods of time prior to interrogation by the police, which, as reported by the State party, currently measure only two square meters;**

(b) **Place mattresses in "24-hour holding cells";**

(c) **Equip prison cells with toilets or provide all detained persons with access to sanitation facilities at all times.**

Denial of medical treatment to persons deprived of their liberty

11. The Committee is concerned at reports that prisoners have been denied access to external medical care, even when such care was requested by a doctor (arts. 11 and 16).

The State party should ensure that persons deprived of their liberty are guaranteed access to necessary medical treatment, including external medical care.

Racist and xenophobic acts against foreign detainees

12. The Committee notes with concern reports of cases of racist and xenophobic acts by some law enforcement and prison personnel against foreign detainees (arts. 12, 13, 14 and 16).

The State party should take all measures necessary to prohibit and punish discrimination and incitement to violence against vulnerable groups and ensure that offences motivated by hate are always investigated and prosecuted and that the perpetrators are convicted and punished.

Juvenile justice

13. The Committee is concerned about the delay in the opening and operation of the Dreiborn closed security unit for minors, which is attributable to delays in the adoption of relevant legislative texts. It is also concerned that minors aged 16 and 18 may, at the discretion of the judge, be brought before ordinary courts and tried as adults for particularly serious offences (arts. 11 and 16).

The State party should take the legislative and administrative measures necessary to expedite the opening and operation of the Dreiborn closed security unit for minors and ensure, in the interim, that juvenile detainees and prisoners under 18 are always held separately from adults, in line with the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (rules 13.4 and 26.3) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (rules 17, 28 and 29). It should employ alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), and ensure that minors are always tried in juvenile courts.

Training

14. While noting with appreciation the detailed information received by the State party regarding the training of civil service employees involved in the arrest, custody, detention and imprisonment of persons, the Committee regrets that there is no information available on the impact of training on preventing torture and ill-treatment. It is concerned that it did not receive sufficient information on the training of personnel on their specific obligations under the Convention and of medical practitioners involved in the treatment of detainees and asylum seekers (arts. 10 and 11).

The State party should:

(a) **Ensure that officials involved in the arrest, custody, detention and imprisonment of persons are trained on and aware of the specific obligations imposed on them under the Convention;**

(b) **Ensure that all relevant staff, including medical personnel, are trained specifically to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

(c) **Develop and implement a methodology for assessing the impact and effectiveness of training programmes with regard to preventing torture and ill-treatment.**

Powers of the Public Prosecutor

15. As expressed in paragraph 11 of the Committee's previous concluding observations (CAT/C/LUX/CO/5), the Committee is concerned about the Public Prosecutor's discretion to decide whether to prosecute perpetrators of acts of torture and ill-treatment involving law enforcement officers or even order an investigation (arts. 12 and 13).

The Committee reiterates its previous recommendation. The State party should ensure that whenever there are allegations of torture or ill-treatment they are investigated promptly and effectively and that perpetrators are sanctioned accordingly.

Investigative powers of the Police Inspectorate

16. The Committee welcomes the appointment of a judicial magistrate as the head of the Police Inspectorate as a measure to improve the independence of the Inspectorate. However, it is concerned that the investigatory body, which is a part of the Ministry of Internal Security and composed of former police officers, is not sufficiently independent to ensure the proper and impartial investigations of complaints of police misconduct as required under the Convention (art. 12).

The State party should consider establishing an investigatory body that is institutionally separate from the Ministry of Internal Security and composed of personnel whose prior professions would not result in or create the perception of any conflict of interest in the execution of their duties or create doubt as to the body's impartiality and independence.

Data collection

17. While welcoming the statistics provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of ill-treatment by law enforcement, security and prison personnel, as well as on means of redress for victims of ill-treatment (arts. 2, 11, 12, 13, 14 and 16).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of ill-treatment, as well as on means of redress, including compensation and rehabilitation, provided to the victims.

Follow-up procedure

18. The Committee requests the State party to provide, by 15 May 2016, follow-up information in response to the Committee's recommendations contained in paragraph 10, on conditions of detention; in paragraph 12, on racist and xenophobic acts against foreign detainees; in paragraph 13, on juvenile justice; and in paragraph 15, on the powers of the Public Prosecutor.

Other issues

19. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

20. The State party is invited to submit its next report, which will be its eighth periodic report, by 15 May 2019. For that purpose, the Committee will, in due course, transmit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.